

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4294 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI G BHAGAT

Versus

DISTRICT PANCHAYAT, BHARUCH & ANR.

Appearance:

MR RR VAKIL for YN OZA for Petitioner

MR NN PANDYA for Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, an employee of the respondent no.2 filed this Sp. Civil Application before this Court praying therein that the respondents may be directed to pay him subsistence allowance at the rate of 75% of the total salary from 28th December, 1979 till the date of his dismissal from the services. The petitioner was involved in a criminal offence punishable under sec. 302, 452,

436, 341, 440 and 427 of the I.P.C. The petitioner was ordered to be placed under suspension by the employer on 29th February, 1979. The petitioner was convicted for the aforesaid offences by the Sessions Court on 28th December, 1979 which judgment was confirmed by this Court and then by the Supreme Court in S.L.P. After the conviction of the petitioner has been confirmed by the Supreme Court, the employer has dismissed him from services under the order dated 17th September, 1984, but the dismissal order was made from the retrospective effect i.e 28th December, 1979 the date of the conviction of the petitioner by the Sessions Court. The only contention made by the counsel for the petitioner is that the petitioner was entitled for the subsistence allowance at the rate as provided under Bombay Civil Service Rules for the period of suspension from 29th September, 1979 to 17th September, 1984. The petitioner shall be deemed to be under suspension for all these period and merely by passing of the order of dismissal from retrospective effect, it cannot be said that he was not in service from 29th September, 1979. The grievance of the petitioner is that in accordance with the relevant rules, the subsistence allowance is to be paid to him at the rate of half of the total salary from the date of suspension to first six months and thereafter 3/4 of the total salary from the completion of the six months of the suspension period till the date of dismissal.

2. In this case, the reply of this Sp. Civil Application has not been filed by the respondent. The interest of justice will be served in case, if this Sp. Civil Application is disposed of with the direction to the respondent to decide the claim of the petitioner for payment of subsistence allowance to him for the period of suspension i.e. from 29th September, 1979 to 17th September, 1984, Merely because the dismissal order has been passed from retrospective effect, the petitioner cannot be disentitled for subsistence allowance and this period is to be treated by the respondent as a period of suspension for all the purposes. The entitlement of the petitioner for the subsistence allowance for this period shall be in accordance with the rules. The order regarding the claim of subsistence allowance shall be made by the respondent within a period of four months from the date of receipt of certified copy of this order. The payment of subsistence allowance, payable to the petitioner in accordance with the rules, shall be paid to him within a period of two months thereafter. Rule is made absolute in the aforesaid terms with no order as to costs.
